Supreme Court, U.S.
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No. 92-1418

In the Supreme Court

OF THE

United States

OCTOBER TERM 1992

SANDPIPER MOBILE VILLAGE,
A Limited Partnership,
Petitioner,

VS.

THE CITY OF CARPINTERIA,
Respondent.

On Petition For A Writ Of Certiorari To The Second Appellate District, Division Six, Court of Appeal For the State of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the state court was correct in ruling that the City of Carpinteria's Rent Stabilization Ordinance did not constitute a federal regulatory taking, even though it restricts a parkowner's ability to increase space rent whenever a mobilehome is transferred from one homeowner to another.

2. Whether the state court was correct in ruling that the City of Carpinteria's Rent Stabilization Ordinance is not a violation of federal substantive due process even though it restricts a parkowner's ability to increase space rent whenever a mobilehome is transferred from one homeowner to another.

LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Sandpiper Mobile Village, a limited partnership, and Respondent, City of Carpinteria.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, City of Sandpaper ("City"), respectfully requests that this Court deny Sandpiper Mobile Village's ("Sandpiper") Petition for Writ of Certiorari ("Petition") seeking review of the California Court of Appeal opinion in this case.

OPINIONS BELOW

On March 19, 1991, the California state trial court (Santa Barbara Superior Court, Case No. 177809) issued its Order granting Judgment on the Pleadings and dismissing Sandpiper's action. See, Order, Petition at D24-25.

On October 15, 1992, the California Court of Appeal (Second Appellate District, Division Six, Case No. B058435) issued its opinion affirming the Judgment of Dismissal. The opinion is

reported at 10 Cal.App.4th 542, 12 Cal.Rptr.2d 623; see also, Slip *Opinion, Petition at A1-21.*

On February 11, 1993, the California Supreme Court (Case No. S029800) issued its one page ruling denying Sandpiper's Petition for Review. See, Ruling, Petition at B22.

JURISDICTION

The opinion of the California Court of Appeal, Second Appellate District, Division Six, was entered October 15, 1992. On February 11, 1993, the California Supreme Court denied Sandpiper's Petition for Review. Sandpiper's Petition for Certiorari was docketed with the United States Supreme Court on March 1, 1993. The jurisdiction of the United States Supreme Court was invoked under 28 U.S.C. section 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

The California Constitution, Article I, Sec. 19, provides in pertinent part:

> Private property may be taken or damaged for public use only when just compensation, . . . has first been paid to, or into court for, the owner.

The California Mobilehome Residency Law (Cal. Civ. Code, Section 798 et seq.) governs many aspects of the relationship between a mobilehome parkowner and a mobilehome owner residing on a rented space in a mobilehome park. Civil Code Section 798.55(a) contains legislative justification for the unique protections provided mobilehome owners. Protections include restrictions on terminating a space tenancy (e.g., Civil Code, Sections 798.55(b), 798.56) and restrictions preventing a

parkowner from interfering with or preventing a homeowner from selling his home to a new purchaser as long as the prospective homeowner has the financial ability to pay the space rent and does not have a prior history indicating that he or she will not comply with the rules and regulations of the park. (E.g., Civil Code, Section 798.74).

[California Civil Code, Sections 798.55, 798.56, 798.56a, and 798.74 are set forth in Appendix F to Sandpiper's Petition at F34-52.]

In March 1980, the City of Carpinteria passed Ordinance 287 establishing mobilehome rent stabilization. Pursuant to that ordinance and its amendments,[1] each year the parkowner is limited to charging as a "maximum rent", the base rent on a certain date (here November 1, 1987) increased by 75% of the CPI increase from a certain date (here November 1, 1987). See, Ordinance 419, sec. 5.69.040, RA at A2. In addition, the parkowner has the opportunity to seek additional rent increases in order to ensure that he receives a "just and reasonable return." (See, Ordinance 371, sec. 5.69.050, Petition at E27-29.)

STATEMENT OF THE CASE

A. Background

The City of Carpinteria is located in the County of Santa Barbara in the State of California.

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[1]Ordinance 287 added Chapter 5.69 to the Carpinteria Municipal Code. That Chapter has been amended several times. Ordinance 371, enacted April 22, 1985 (see excerpts in Appendix E to Sandpiper's Petition at E26-33 and additional excerpts, Respondent's Appendix ("RA") at A1) readopted and extended the ordinance until June 30, 1990. Later amendments include Ordinance 388, enacted February 10, 1986 (the last restatement of the entire ordinance), Ordinance 419, enacted October 26, 1987 (see excerpts RA at A2), and Ordinance 450, enacted August 28, 1989 which extended the effect of Chapter 5.69 "until the vacancy factor in mobilehome parks in the City rises to three percent, or more for a period of one year."

At the time of its construction Sandpiper was located outside Carpinteria and subject to the jurisdiction of in the County of Santa Barbara. In 1979 the County of Santa Barbara enacted Ordinance 3122 establishing mobilehome rent stabilization.[2] The County Ordinance, like Carpinteria's, provided no exception from rent regulation merely because a mobilehome was transferred from one homeowner to another.

In 1987, Carpinteria annexed Sandpiper into the City of Carpinteria. As a result it became subject to the provisions of the Carpinteria Ordinance.

B. Procedural History

1. The State Superior Court Ruling

On July 21, 1989, *without first requesting any rent increase other than the automatic 75% of the CPI* under the City Ordinance, Sandpiper filed a Complaint in the Santa Barbara Superior Court. Primarily relying on *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986), *cert. denied*, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988), Sandpiper alleged that because the Ordinance did not permit it to automatically increase rents whenever a mobilehome was sold on site, the Ordinance constituted a "taking" of its property, was irrational and served no legitimate governmental purpose.[3]

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[2]Ordinance 3122, enacted October 22, 1979, added Chapter 11A to the Santa Barbara County Code. Similar to the later adopted Carpinteria Ordinance it generally limited rent increases to 75% of the increase in the CPI (sec. 11A-6) and also gave the parkowner an opportunity to seek additional rent increases to obtain a "just and reasonable return." Sec. 11A-5. It also was amended several times. The version in effect when Sandpiper was annexed to the City of Carpinteria was Ordinance 3589 enacted October 6, 1986.

[3]Although Sandpiper's original Complaint referred to takings only under the California Constitution, Article I, sec. 19, in subsequent pleadings and arguments both at the trial and appellate levels, it clearly indicated that it was also alleging takings and substantive due process violations under the Fifth and Fourteenth Amendments to the United States Constitution.

On December 4, 1989, the Honorable Ronald C. Stevens, Judge of the Santa Barbara Superior Court, issued a Memorandum of Intended Decision overruling the City's Demurrer to the Complaint. However, following the state court of appeal decision in *Yee v. City of Escondido*, 224 Cal.App.3d 1349, 274 Cal.Rptr. 551 (1990), and a new motion by City, on March 19, 1991 the Honorable Bruce Wm. Dodds, Judge of the Santa Barbara Superior Court entered an Order granting Judgment on the Pleadings. See, Petition at D24-25.

2. The State Court of Appeal Decision

On May 9, 1991, Sandpiper filed a Notice of Appeal with the state Court of Appeal. At oral argument the parties informed the Court of Appeal that the United States Supreme Court had granted certiorari in *Yee*, that *Yee* had been orally argued on January 22, 1992, and that the Supreme Court's decision in *Yee* could well be dispositive of the appeal. Thereafter, the Court of Appeal issued an Order taking the matter off calendar pending the Supreme Court ruling in *Yee*.

On April 1, 1992, the United States Supreme Court decided *Yee v. City of Escondido*, 503 U.S. ____, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) unanimously affirming the state Court decision, and rejecting the *Hall* physical taking analysis. See, *Yee, supra,* 118 L.Ed.2d at 164-68. The Court also examined substantive due process and regulatory taking challenges but did not pass on either. *Id.* at 168-72.

After *Yee* the Court of Appeal in *Sandpiper* authorized supplemental briefing and oral argument on the "regulatory taking" issue.

On October 15, 1992, in a decision reported as *Sandpiper Mobile Village v. City of Carpinteria*, 10 Cal.App.4th 542, 12 Cal.Rptr.2d 623 (1992) (see also Slip Opinion, Petition at A1-21), the Court of Appeal affirmed. It held that Carpinteria's Ordinance (1) does not constitute a physical taking of Sandpiper's property (*Id.* at 547), (2) is rational and serves a legitimate public purpose and therefore does not violate substantive due process (*Id.* at 547-548), and (3) on its face validly regulates

mobilehome rent. The Court did not consider any regulatory taking claim "as applied" because Sandpiper had not alleged "that it has attempted to change the use of the park or to apply for rent increases." *Id.* at 549.

3. The California Supreme Court's Denial of Review

On November 17, 1992, Sandpiper filed a Petition for Review with the California Supreme Court. On January 19, 1993, the California Supreme Court denied Sandpiper's request for review. See Ruling, Petition at B-22.

WHY THIS WRIT SHOULD BE DENIED

I

THE LOWER COURT'S DECISION IS CONSISTENT WITH THIS COURT'S DECISION IN YEE AND OTHER CALIFORNIA RENT CONTROL CASES

While Sandpiper's Petition never specifically referred to this Court's decision in *Yee v. City of Escondido*, *supra*, 118 L.Ed.2d 153, it is apparent that Sandpiper interprets that decision as supporting its regulatory taking argument. See, Petition, i (Questions Presented). In fact, the lower court's decision is totally consistent with *Yee*.

In *Yee*, this Court considered a very similar challenge to another city's mobilehome rent review ordinance. There the parkowner also alleged that the Ordinance constituted a taking because it did not permit a parkowner to automatically raise rents when a mobilehome was sold or transferred. 118 L.Ed.2d at 164-165.

On April 1, 1992, this Court in a unanimous opinion by Justice O'Connor held that Escondido's Ordinance, even when considered against the backdrop of the California Mobilehome Residency Law (Cal. Civil Code sec. 798 et seq.) did not constitute a "physical taking" of the parkowner's property. *Yee*, *supra*, 118 L.Ed.2d 153.

Since this was the first time that the Supreme Court had ever considered a mobilehome case the Court's statements are illumi-

nating. First, it acknowledged that "mobilehomes are largely immobile as a practical matter." 118 L.Ed.2d at 162. Second, it recognized that California had enacted the Mobilehome Residency Law in recognition of the unique problems of and need to protect mobilehome residents. 118 L.Ed.2d at 163. Third, it noted that while the Mobilehome Residency Law provides several protections it does not put limits on rents; to close this gap, several communities had adopted mobilehome rent control ordinances. 118 L.Ed.2d at 163.

Yee argued that as a result of the lower rents under the Escondido ordinance, the value of the mobilehomes would increase and that when the current occupant sold the mobilehome, he/she would receive a "premium" corresponding to this increase in value. *Ibid.* However, this Court indicated, even assuming the above allegations were true, the ordinance would not constitute a "physical taking" because nothing in Escondido's ordinance or the Mobilehome Residency Law required the parkowner to submit to the physical occupation of its land. 118 L.Ed.2d at 165-67.[4]

After thus rejecting the *Hall* "physical taking" analysis, this Court also examined Yee's "substantive due process" and "regulatory taking" challenges. 118 L.Ed.2d at 168. As to the due process claim, this Court concluded that since the issue had not been raised or decided below "we will not consider it here." 118 L.Ed.2d at 169.

Finally, the Court addressed Yee's "regulatory taking" claim. Earlier in the opinion, the Court had noted that Yee's allegations that the only person benefitting from the ordinance was the current mobilehome owner "might have some bearing on whether the ordinance was a *regulatory* taking because it might shed some light on whether there is a significant nexus between the effect of the ordinance and the objectives it is supposed to advance."

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[4]In so doing the Court disapproved two prior Federal Circuit Court cases (*Hall v. City of Santa Barbara*, *supra*, and *Pinewood Estates of Michigan v. Barnegat Township Leveling Board*, 898 F.2d 347 (3rd Cir. 1990). See, 118 L.Ed.2d at 164.

118 L.Ed.2d at 167.[5] However, when faced with the "regulatory taking" claim this Court chose not to decide that issue. Instead, it construed its grant of certiorari as only addressing the "physical taking" issue and decided "to leave the regulatory taking issue for the California courts to address in the first instance." 118 L.Ed.2d at 172.

Far from being inconsistent with *Yee*, the Court of Appeal decision in *Sandpiper* is clearly the type of state court action anticipated by this Court. The fact that this Court indicates that a certain set of facts might be relevant to a regulatory taking claim does not mean that upon further inquiry it will in fact state such a cause of action. See, e.g., *First English Evangelical Lutheran Church v. County of Los Angeles*, 210 Cal.App.3d 1353, 258 Cal.Rptr. 893 (1989), *cert. denied*, 493 U.S. 1056, 110 S.Ct. 866, 107 L.Ed.2d 950 (1990) (On remand from United States Supreme Court, which had held that a landowner is entitled to compensation — not merely injunctive relief — when a court finds there has been a unconstitutional regulatory taking, the state Court sustained dismissal of a regulatory taking claim for failure to state a claim because the regulation did not constitute a taking of all use of the landowner's property). In *Sandpiper* the Court of Appeal directly considered whether this type of ordinance constituted a regulatory taking and correctly concluded that no "taking" was involved because the City had not denied the parkowner all "economically viable use of [the] land" (*Sandpiper*, 10 Cal.App.4th at 550) and because the ordinance "substantially advances a legitimate state interest." *Id.* at 551.

Prior California decisions are also consistent with *Sandpiper*. In *Oceanside Mobilehome Parkowners' Ass'n v. City of Oceanside*, 157 Cal.App.3d 887, 906-07, 204 Cal.Rptr. 239 (1984), it was argued that the combined effect of the Mobilehome Residency

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[5]The Court also mentioned that the extent to which the ordinance deprived petitioners of the ability to choose incoming tenants may also be relevant to a regulatory taking argument. 118 L.Ed.2d at 167. Justices Blackmun and Souter, while concurring in the Court's decision, did not join in the references to the relevance of Yee's claims to a regulatory taking. See, 118 L.Ed.2d at 172-73.

Law (Civil Code sec. 798, et seq.) and the Oceanside Mobilehome Rent Control Ordinance allowed the tenants to sell their homes for a premium, thereby transferring the increase in value from the owner to the tenant and thus violating the parkowner's rights under the "taking" clauses of the Fifth and Fourteenth Amendments and sections 1 and 19 of Article I of the California Constitution.

In rejecting these arguments, the Court stated:

> The ordinance is structured to establish a base rent which reflects general market conditions and incorporates relevant pricing factors. Rents will not be "reduced more than required for the purposes of the police power."

157 Cal.App.3d at 907.

The *Oceanside* Court correctly understood that the proper focus of inquiry for determining whether there is a "taking" is not the price received by the homeowner for his home, but the rent allowed the parkowner. If the rent permitted is "just and reasonable" then there is no "taking" because the parkowner has received all he is due.

The *Oceanside* Court also recognized that, due to the "realities of a captive market" and "the proprietary interests mobile homeowners have individually and cumulatively in their homes", the ordinance has a legitimate purpose in protecting the value of the homeowner's equity interest in their homes. See, 157 Cal.App.3d at 911 n.9.

In *Yee v. City of Escondido, supra*, 224 Cal.App.3d 1349, the state Court of Appeal, in affirming a dismissal, expressly rejected taking challenges to an ordinance which did not permit a parkowner to automatically raise rents merely because a mobilehome was sold or transferred. The Court pointed out that:

> [p]laintiffs' complaints never allege the Escondido ordinance is irrational because it denies them fair and reasonable rents. Indeed, the owners have never attempted to obtain Escondido's approval for what they consider to be a 'fair' rent. In the absence of such a contention, we assume the rents provided for by the ordinance are fair. If they are, there is no

> 'taking.' The fact that used mobilehomes in Escondido are selling for more than they have in the past is irrelevant.

224 Cal.App.3d at 1354.

The *Yee* Court of Appeal decision clearly indicated that it believed the ordinance to be "rational" and that under the circumstances the decision whether to use rent control was "a political issue for legislative action and not a question of constitutional law for the courts." *Yee*, 224 Cal.App.3d at 1358.

In *Casella v. City of Morgan Hill*, 230 Cal.App.3d 43, 57, 280 Cal.Rptr. 876 (1991), *cert. denied*, ____ U.S. ____ , 112 S.Ct. 1665, 118 L.Ed.2d 387 (1992), another state Court of Appeal, when faced with the same question, concluded:

> The stated purpose of the city's ordinance is to control excessive rental prices for the largely fixed-income residents of mobilehome parks. This is unquestionably a legitimate state interest. The City of Morgan Hill could reasonably have concluded that the mobilehome rent control ordinance would promote this goal. Whether as a means to achieve its stated purpose rent control is a good idea is a political decision — one which properly rests with the legislative branch of government. We agree with Yee that this is "not a question of constitutional law for the courts. [citation]"

230 Cal.App.3d at 57.[6]

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[6]See also, *Casella*, *supra*, 230 Cal.App.3d at 57, agreeing with the *Hall* dissenters that "'[s]ignificant doubt' as to whether a legislative body's goals are in fact achieved is not sufficient to warrant striking down an ordinance[] . . . Legislation passes muster if the legislature reasonably could have concluded that its action would promote a legitimate state interest. The judiciary does not have the power to sit as a 'superlegislature' second-guessing the wholly economic regulations of state and local governments." (833 F.2d at 1284 [citations omitted], Schroder, J. dissenting from the denial of en banc hearing).

II

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED SANDPIPER'S TAKING CLAIMS

Sandpiper bases its argument for granting this Writ of Certiorari on the allegation that the State Court of Appeal decision is "in error." Petition at 11. Sandpiper's argument is without merit.

A. The Court Below Correctly Ruled That Carpinteria's Ordinance Does Not Constitute A Physical Taking

This Court in *Yee* concluded:

> The Escondido rent control ordinance, even considered against the backdrop of California's Mobilehome Residency Law, does not authorize an unwanted physical occupation of petitioners' property. It is a regulation of petitioners' *use* of their property, and thus does not amount to a per se taking.

118 L.Ed.2d at 168.

Basing its decision on this Court's *Yee* ruling, the Court of Appeal discussed Sandpiper's various physical taking contentions and correctly concluded that "Sandpiper, like *Yee*, fails to establish a physical taking because there has simply been no compelled physical occupation giving rise to a right to compensation . . . " *Sandpiper*, *supra*, 10 Cal.App.4th at 547.

B. The Court Below Correctly Ruled That Any As Applied Regulatory Taking Claim Is Not Ripe

This Court has generally declined to address the merits of "takings" claims in cases in which the government had not yet reached a final decision concerning the application of its regulations to the property at issue. For example, in *Pennell v. City of San Jose*, 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988), appellants contended that San Jose's rent control ordinance, which allowed a hearing officer to consider the "hardship to a tenant" when determining whether to approve a proposed rent increase, was facially unconstitutional. This Court declared the claim premature because San Jose had made no authoritative determination as to how the regulations would be applied; i.e.,

"there [was] simply no evidence that the 'tenant hardship clause' ha[d] in fact ever been relied upon by a hearing officer to reduce a rent below the figure it would have been set at on the basis of the other factors set forth in the Ordinance." 485 U.S. at 9-10.

Prior to this lawsuit, Sandpiper did not seek a rent adjustment under the Ordinance and thus no final decision concerning the application of the Ordinance to its property was before the lower court. By failing to seek relief in the manner provided by the Ordinance, Sandpiper failed to provide the City with an opportunity to negotiate an agreement — viz., an acceptable rent increase—that might obviate any perceived constitutional deficiencies in the City's rent control scheme. Moreover, without knowing what rents the City will permit Sandpiper to charge, the lower court could do no more than speculate about the economic impact — if any — of the Ordinance on Sandpiper's property or the extent to which it interferes — if at all — with Sandpiper's investment-backed expectations. Consequently, any "as applied" regulatory challenge is entirely unripe. See, *Yee*, *supra*, 118 L.Ed.2d at 169; see also, *Williamson County Regional Planning Comm. v. Hamilton Bank*, 473 U.S. 172, 186-197, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

Under the circumstances, the *Sandpiper* Court of Appeal correctly ruled "Because Sandpiper has not alleged that it has attempted to change the use of its park or to apply for rent increases, its regulatory taking claim is not ripe." 10 Cal.App.4th at 549.[7]

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[7]Since any applied regulatory taking claim was clearly unripe it was unnecessary for the Court below to discuss the constraints of "as applied" regulatory takings pursuant to *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). Had it done so, the inquiry should have been relatively quick. At the time it was annexed to the City in 1987, Sandpiper had already been subject to a virtually identical County ordinance for the past eight years. Therefore it is extremely difficult to imagine how "its distinct investment backed expectations" (see, 438 U.S. at 124) could have been further impacted or interfered with by the same provisions in the City Ordinance.

C. The Court Below Correctly Ruled That Sandpiper's Facial Regulatory Claim was Meritless

After noting that Sandpiper's *Complaint* did not set forth a facial regulatory taking challenge, the lower court nevertheless considered Sandpiper's argument [first set forth in its Supplemental Brief to the Court of Appeal (after the United States Supreme Court decided *Yee*)] that "the ordinance does not substantially advance a legitimate governmental interest no matter how the ordinance is applied." *Sandpiper*, *supra*, 10 Cal.App.4th at 549.

The Court of Appeal properly ruled that Sandpiper's facial regulatory taking challenge fails because the ordinance neither deprives Sandpiper of all economic use of its property nor fails to substantially advance legitimate state interests.[8]

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[8]An alternative ground which supports the dismissal of Sandpiper's federal facial regulatory taking claim is that it was barred by applicable statutes of limitations. Although City raised statutes of limitation as an affirmative defense in its answer, and at the Appellate level in both its Respondent's Supplemental Brief and Answer to Petition for Review, the Court of Appeal only addressed the applicability of state statutes of limitation to Sandpiper's *state* taking claims. See *Sandpiper*, *supra*, 10 Cal.App.4th at 549 (finding Sandpiper's state taking claim not barred because brought within five years of the enactment of Ordinance 371). Nevertheless, the law is clear that Sandpiper's federal taking claim arises when the ordinance is enacted. See, *De Anza Properties X Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1087 (9th Cir. 1991); *Azul Pacifico v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992), *cert. denied*, ____ U.S. ____, 113 S.Ct. 1049, 122 L.Ed.2d 357 (1993). In addition, to be timely such a federal claim must be brought under 42 U.S.C. sec. 1983 which is subject to a one year statute. *De Anza*, *supra*, 936 F.2d at 1084-85, *Azul*, *supra*, 973 F.2d at 705. Here Sandpiper became subject to the City's Ordinance in 1987 and did not file this suit until July 1989. As a result its federal regulatory claim is clearly barred on statute of limitations grounds also.

1. Carpinteria's Ordinance Does Not Deprive Sandpiper Of All Economic Use Of Its Property.

In *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 495, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987), this Court stated:

> The test to be applied in considering this facial challenge is fairly straightforward. A statute regulating the uses that can be made of property effects a taking if it 'denies an owner economically viable use of his land. [citation]'
>
> Petitioners thus face an uphill battle in making a facial attack on the Act as a taking.

See also, *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980) (Unless the regulatory ordinance denies the property owner substantially all economically "viable use of land" there is no compensable taking); *Lucas v. South Carolina Coastal Council*, 505 ____ U.S. ____, 112 S.Ct. 2886, 120 L.Ed.2d 798, 813 (1992) (A regulation which denies "all economically beneficial or productive use of land" is a taking).

Clearly, Sandpiper is not denied all economic use of its property because it can and does receive rents.

The only "right" Sandpiper has lost is the "right" to extract excessive rents from mobilehome owners due to the shortage of mobilehome spaces and the immobility of mobilehomes. This "right" is not a separate, legally protected interest in property. Cf. *Block v. Hirsch*, 256 U.S. 135, 157, 41 S.Ct. 458, 65 L.Ed. 865 (1921) (Court upheld law providing "reasonable rent" while depriving landlords of the right to "profit by the sudden influx of people to Washington").

Even assuming that the right to use its property in this manner was a discrete and legally protected "property interest," Sandpiper's facial regulatory takings claim still fails. As the United States Supreme Court has explained:

> 'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In decid-

> ing whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature of the interference with rights *in the parcel as a whole.* . . .

Keystone, supra, 480 U.S. at 497 (quoting *Penn Central, supra*, 438 U.S. at 130-31) (emphasis in original). Thus, "where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking because the aggregate must be viewed in its entirety." *Keystone, supra*, 480 U.S. at 497 (quoting *Andrus v. Allard*, 444 U.S. 51, 65-66, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979)). This standard entirely undermines Sandpiper's attempted regulatory challenge: Sandpiper continues to rent its property and remains free to sell its property or to put it to alternative uses should it wish to do so.

2. On Its Face, The Ordinance Substantially Advances Legitimate State Interests.

Relying on *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), Sandpiper also argues that Carpinteria's Ordinance effects a regulatory taking because it fails to substantially advance a legitimate governmental interest. Petition at 11. This assumes the *Nollan* test applies to regulatory takings. But see, *Casella v. City of Morgan Hill, supra*, 230 Cal.App.3d at 57 (The Court quoted from Manheim, "*Tenant Eviction Protection and the Takings Clause*," 1989 Wisc. L. Rev. 925, and indicated that the *Nollan* heightened scrutiny approach may be limited to possessory taking cases.).[9]

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[9]Other state and federal California Courts have also held that the heightened scrutiny of the *Nollan* test applies only to unconstitutional conditions and possessory takings, not regulatory takings. See, e.g., *Blue Jeans Equities West v. City and County of San Francisco*, 3 Cal.App.4th 164, 169-170, 4 Cal.Rptr.2d 114 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 191, 121 L.Ed.2d 135 (1992) (Heightened scrutiny test did not apply to imposition of development fee on owner and developer); *Commercial Builders of Northern California v. City of Sacramento*, 941 F.2d 872, 874 (9th Cir. 1991), *cert. denied*, ___ U.S., ___ 112 S.Ct. 1997, 118 L.Ed.2d 593 (1992) (Same).

According to Sandpiper, departing homeowners are able to capture the full value of the rent protection in the premium that attaches to their mobilehomes. Sandpiper is wrong. As discussed *infra*, the Ordinance protects both current homeowners and future homeowners.

a. *Carpinteria's Ordinance Protects Current Homeowners From Excessive Rent Increases And Protects The Investment In Their Homes.*

The Ordinance substantially advances Carpinteria's perfectly legitimate goal of protecting *current* homeowners from escalating rent increases.

Furthermore, mobilehome owners have a substantial investment in their homes. See, e.g., Baar, "*The Right to Sell The 'Im' Mobile Manufactured Home in its Rent Controlled Space in the 'Im' Mobile Home Park: Valid Regulation or Unconstitutional Taking*?" 24 Urban Lawyer 157, 159 & nn. 10, 12 (1992) ("In California, mobilehome prices ranging from $50,000 to $100,000 are standard. . . . [a Los Angeles survey indicated that] on the average mobilehome owners have triple the investment of parkowners in their spaces."). See also, *Oceanside Mobilehome Parkowners' Ass'n v. City of Oceanside, supra*, 157 Cal.App.3d at 911 n.9 (Local ordinance recognized that "[c]ollectively, the manufactured home owners have a greater investment than does the manufactured home parkowner").

In the absence of protection against rent increases on transfer, a parkowner could force a current homeowner to sell his/her home at distressed sales prices thereby jeopardizing his/her investment. For example, it is illuminating to note what occurred in the Hall park after the City of Santa Barbara repealed vacancy control. Almost immediately Mrs. Hall informed certain park residents that she was going to raise rent on any transfer by $250 to $300 per month.

The results as reported by Mrs. Hall's attorney, Mr. Jagiello, were:

> . . . in the Hall park over the last two years, not one coach has sold, although many are for sale, but for the exception of

> a coach that sold two weeks ago for one dollar. There were attempts to give coaches away to charities and they wouldn't take them. There is no market for coaches in Santa Barbara." See, Administrative Record to *Palomar Estates East v. City of San Marcos*, San Diego Superior Court No. N48882, April 9, 1990 Hearing Transcript at 7.

Although prior to this Court's decision in *Yee, supra*, the Ninth Circuit had followed *Hall, supra*, it had nevertheless recognized the potential dangers of not regulating rents when mobilehomes were transferred. See, *Azul v. City of Los Angeles*, 948 F.2d 575 (9th Cir. 1991), *opinion withdrawn on rehearing in light of Yee*, 973 F.2d 704 (9th Cir. 1992), where that Court had admitted:

> [T]he ordinance does protect existing tenants from being forced to sell their coaches at distress-sale prices in the event landlords were to set rents for new tenants so high that no one would want to buy the coach. See 740 F.Supp. at 780 ("Based on testimony from mobile home tenants, the City found that, without vacancy control, it would be virtually impossible for tenants to sell their homes on the pad because landlords could raise the rent to a level that prospective buyers could not afford."). The correctness of the city's decision to insure coach owners against unscrupulous landlords in this way is a legislative question, not a judicial one. "[The Supreme] Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular." *Loretto*, 458 U.S. at 440, 102 S.Ct. at 3178. Because the vacancy control provision serves the same governmental purpose — protecting incumbent tenants — as the RSO we cannot say that it is unconstitutional. Unlike the city's other rationales, this one falls within the traditional police power and thus there is a sufficient nexus between the challenged provision

> and a legitimate justification. See *Nollan*, 483 U.S. at 837, 107 S.Ct. at 3148.

948 F.2d at 583.[10]

b. *The Ordinance Protects Future Homeowners In The Same Way.*

The principal thrust of Sandpiper's argument is that the Ordinance is irrational because it does not protect purchasers from increases in the prices they must pay for their homes.[11] But see, *Casella, supra*, which pointed out:

> As *Yee* and others have pointed out, the increase in the sales prices of mobilehomes resulting from rent control may simply reflect the artificially low price caused by excessive rents charged prior to its enactment. The mere fact that increased coach prices are a corollary to rent control does not establish that a taking has occurred, however. [Citation]

230 Cal.App.3d at 54.

Even if the constitutionality of the Ordinance did turn on the narrow question of whether it benefits future homeowners, the Ordinance would withstand scrutiny even under the *Nollan* standard because it substantially advances the City's interest in protecting these individuals. The Ordinance protects these future

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[10]It is clear that in the absence of rent restrictions when a mobilehome is sold or transferred certain parkowners would attempt to raise their new rent to "all the market can bear." Thus, a homeowner who in good faith invested in a home, recognizing the reality that the home could not be moved, could be faced with the prospect of losing the value of his or her investment or remaining a captive in the mobilehome park.

Unless homeowners and their lenders are assured that the value of a home will remain relatively stable, the mobilehome market will evaporate, investments will be lost, and a legitimate affordable housing option will be removed.

[11]Initially it is interesting to note that it is the parkowners, not the future homeowners, who argue that the Ordinance fails to protect future homeowners. This fact alone should give a Court pause before finding that such future homeowners are not benefitted.

homeowners, just as it protects current homeowners, by preventing parkowners from charging excessive rents. This is by itself, a legitimate state interest. Furthermore, future homeowners, no less than current homeowners, in the absence of rent protection, might be forced to sell their homes at distress sale prices (*Azul, supra*), and the City has a legitimate interest in protecting the investments that these future homeowners make.

In addition, the Ordinance provides future homeowners a less obvious, but ultimately no less important benefit — a significant degree of financial stability. Many mobilehome homeowners are either senior citizens living on fixed incomes or young families struggling to pay for their first home. In either case, they need protection against excessive rent increases. In the absence of rent protection, such purchasers would have no way of planning for potentially exorbitant rent increases that could wreak havoc with their budgets and destroy the value of their investments in their homes.[12]

In sum, the investments of future as well as current homeowners will be protected both from immediate extinguishment by higher rents immediately following their purchase, and later extinguishment caused by higher rents immediately following their later sale. As a result, it is likely that future mobilehome owners will be more willing to invest in the maintenance and improvement of their mobilehomes; lenders will be more willing to finance mobilehome purchases; mobilehome living will continue to be a legitimate affordable housing option.

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[12]In arguing that only current homeowners benefit from the Ordinance because the alleged "premium" paid by the future homeowners exactly equals their savings in rent, Sandpiper ignores these benefits that the Ordinance clearly does afford future homeowners. Moreover, Sandpiper's assumption that current homeowners can extract the full value of future rent savings is questionable at best. At the time of sale, uncertainty about a number of factors — not the least of which would be the number and size of future Board-approved rent increases — would make an accurate calculation of future rent savings virtually impossible. In addition, Sandpiper's theory assumes that individual homeowners have sufficient market power to extract a "premium" from future purchasers.

Certainly the City of Carpinteria could reasonably conclude, as have dozens of other communities,[13] that mobilehome parkowners could do more harm to the public interest by charging excessive rents to essentially captive homeowners than individual homeowners could do by requesting excessive prices for their homes. Cf., *Eamiello v. Liberty Mobile Home Sales, Inc.*, 208 Conn. 620, 546 A.2d 805, 820 (1989), *appeal dismissed*, 489 U.S. 1002, 109 S.Ct. 1104, 103 L.Ed.2d 169 (1989), which in upholding the right of a mobile home owner to sell his home on site stated:

> In choosing the tenant rather than the mobile home park operator as the recipient of this economic advantage arising from the near-monopoly status of the industry, the legislature, by allocating its benefit to those who generally are more in need, has not violated any constitutional principle. In our view, [the statute] strikes a reasonably fair balance between the economic interests of mobile home tenants and those of mobile home park operators.

In any event, the choice of solutions belongs to the City. This Court has long ago decided that the wisdom of laws are for those elected to pass laws; the courts "do not sit as a superlegislature" to reweigh those decisions in their own scales of justice. *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423, 72 S.Ct. 405, 96 L.Ed. 469 (1952). As Justice Black wrote in *Ferguson v. Skrupa*, 372 U.S. 726, 732, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963), "[w]hether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes" — or George Stigler, James Buchanan, John Kenneth Galbraith or any other economist, for that matter — "is no concern of ours." It is respectfully submitted that nothing authorizes this Court to substitute its judgment for that of the City as to how best to protect current and future homeowners' significant investment in their homes and to protect mobilehome living as an affordable housing option.

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[13]According to a July 1, 1992 report by WMA (Western Mobilehome Parkowner's Association) approximately 50 California jurisdictions provide full or partial rent regulation when a mobilehome is sold or transferred.

III

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THAT CARPINTERIA'S ORDINANCE DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS

Sandpiper argues that the Ordinance is irrational because its regulations on rent when mobilehomes are transferred do not advance a legitimate governmental purpose. Sandpiper's argument is without merit.

As the *Sandpiper* Court correctly pointed out, the Carpinteria Ordinance seeks to remedy an inequitable market situation caused by the scarcity of mobilehomes. The Ordinance protects mobilehome owners from unreasonable space rental increases, therefore protecting the homeowners' investments, while providing parkowners with a reasonable return on the parkowner's investment. *Sandpiper*, 10 Cal.App.4th at 551.

In *Pennell v. City of San Jose*, *supra*, 485 U.S. at 12-14, this Court *rejected* a similar contention that "[t]he objective of alleviating individual tenant hardship is . . . not a policy that the legislature is free to adopt in a rent control ordinance." The Court pointed out that "we have long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare." *Id.* at 13.

Both the United States and California Supreme Courts have previously held rent control to be a reasonable and legitimate means of addressing problems related to scarcity in real property and the high rents resulting from inequities in bargaining power. See, *Block v. Hirsch*, *supra*, 256 U.S. at 157 (Rent control approved as a method to prevent excessive profits for landlords); *Carson Mobilehome Parkowners Ass'n v. City of Carson*, 35 Cal.3d 184, 189 n.4, 197 Cal.Rptr. 284 (1983) (The imposition of mobilehome rent controls is a rational curative measure designed to counteract the ill effects of a "shortage of mobilehome spaces which has resulted in a low vacancy rate and rapidly rising space rents."); cf. *Nash v. City of Santa Monica*, 37 Cal.3d 97, 104-109, 207 Cal.Rptr. 285 (1984), *app. dism.*, 470 U.S. 1046, 105 S.Ct. 1740, 84 L.Ed.2d 807 (1985) (A rent control ordinance which required a predemolition permit before a landlord could demolish

rental units was held to be reasonably related to the legitimate goal of maintaining adequate rental housing); *Fisher v. City of Berkeley*, 37 Cal.3d 644, 700-702, 209 Cal.Rptr. 682, *affirmed on other grounds*, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d 206 (1986) (Provision of rent control ordinance which permitted tenant to withhold the full amount of his rent if landlord failed to register was reasonably related to its purpose).

The Ninth Circuit has agreed even in cases which otherwise followed *Hall*. For example, in *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991), *vacated*, ____U.S. ____, 113 S.Ct. 31, 121 L.Ed.2d 4 (1992), the Ninth Circuit stated:

> [T]he City council could reasonably believe that in the majority of cases the ordinance serves the valid public purpose of keeping mobile home rent from becoming prohibitively high. (Citation) How well the ordinance serves this purpose is a legislative question, one the court will not consider.

Id. at 958.

See also, *Schnuck v. City of Santa Monica*, 935 F.2d 171 (9th Cir. 1991), wherein the Court upheld the City's rent control ordinance against a substantive due process attack noting that "the Supreme Court has upheld numerous constitutional challenges to rent control laws" (see, 935 F.2d at 174 n.1). The *Schnuck* Court stated that questions as to whether Santa Monica had a legitimate governmental purpose for enacting rent control generally should be left to the local legislature or the voters (*Id.* at 175), and dismissed arguments that the Ordinance did not substantially advance its "purpose" by pointing out that the ordinance's "purposes" were not to be as narrowly defined as the landlord wished.

CONCLUSION

Sandpiper's Petition for Certiorari at times reads more like an economic or political treatise than a legal brief. Time and time again it asks the Court to base legal conclusions on its version of

"mobilehome economics."[14] Time and time again it asks this Court to second guess the City's determination (see Ordinance 371, sec. 1, RA A-1) that its Ordinance has been "effective" and "beneficial". Since both issues involve legislative not judicial determinations this Court should decline the invitations.

Under the circumstances City respectfully submits that the Court should deny Sandpiper's Petition seeking review of the taking and due process decisions of the state court because it is clear that these decisions were properly made.

DATED: March 31, 1993

Respectfully submitted,

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[14]For example, it first contends that mobilehomes are "wasting assets," which depreciate in value (Petition at 17), but see, Nutt-Powell, *"Manufactured Homes, Making Sense of a Housing Opportunity"* (Auburn House Publishing Co., Boston, Mass. 1982) (Pointing out that the historical view that mobilehomes depreciate like used cars has been abandoned due to "mounting evidence that mobilehomes appreciate rather than depreciate in value"). Although Sandpiper later admits that "mobilehomes, in place in a Park, can frequently rise in price" (Petition at 17), it contends all the appreciation belongs to the parkowner, who owns the underlying land. *Id.* at 17-18. But see, *Casella, supra*, 230 Cal.App.3d at 55 (Pointing out that California property law considers leasehold value the property of the tenant, not the landlord); see also, *Kendall v. Ernest Pestana*, 40 Cal.3d 488, 504, 220 Cal.Rptr. 818 (1985) (Rejecting the assertion that any increase in market value of real property during the term of the lease belongs to the lessor not the lessee).

APPENDIX A

ORDINANCE NO. 371

AN ORDINANCE OF THE CARPINTERIA CITY COUNCIL RE-ADOPTING AND EXTENDING CHAPTER 5.69, AS AMENDED, OF THE CARPINTERIA MUNICIPAL CODE RELATING TO MOBILE HOME PARK RENT STABILIZATION, FOR AN ADDITIONAL FIVE-YEAR PERIOD

(Excerpt)

SECTION 1

WHEREAS, the Carpinteria City Council originally adopted, by Ordinance 287, on March 10, 1980, a Mobile Home Park Rent Stabilization program; and

WHEREAS, said Ordinance 287 added Chapter 5.69 to the Carpinteria Municipal Code and has subsequently been amended for purposes of clarification; and

WHEREAS, said Chapter 5.69 of the Carpinteria Municipal Code has proven to be an effective and beneficial program for the people of Carpinteria; and

WHEREAS, Section 5.69.160 of said Chapter 5.69 provides that said chapter shall expire on June 30, 1985, unless extended by the City Council; and

WHEREAS, the Carpinteria Mobile Home Park Rent Stabilization Board has recommended that said rent stabilization program be extended for an additional five year period to June 30, 1990; and

WHEREAS, this City Council finds that it is in the public interest to extend and continue said Chapter 5.69 of the Carpinteria Municipal Code.

NOW THEREFORE, THE CARPINTERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

ORDINANCE NO. 419

AN ORDINANCE OF THE CARPINTERIA CITY COUNCIL AMENDING THE CARPINTERIA MUNICIPAL CODE, AS AMENDED BY AMENDING SECTIONS 5.69.040 AND 5.69.070, RELATING TO MOBILE HOME PARK RENT STABILIZATION

(Excerpt)

SECTION 1

Section 5.69.040 of the Carpinteria Municipal Code, as amended, is hereby further amended to read as follows:

. . .

C. *Formula for Mobile Home Parks Annexed into the City on or after January 1, 1987.* Except as otherwise expressly provided in this chapter, the maximum rent for each mobile home space that management of a mobile home park in this category shall be permitted to charge shall be set forth in an effective rent schedule as follows:

The maximum allowable rent shall be calculated annually and shall be the sum of the following:

1. The November 1, 1987 rent; and

2. The November 1, 1987 rent times 75% of the ratio of change in the Consumer Price Index (CPI).

D. *Effective Rent Schedule for Annexed Mobile Home Parks.* Annually and as soon as practical after the release of the C.P.I. for March of each year and using the July 1, 1987 rent schedules previously filed by each annexed mobile home park, the city manager shall make the calculations for each such mobile home park, as provided by Paragraph C of Section 5.69.040 and shall file same in the City Clerk's Office as a rent schedule and mail a copy of the applicable rent schedule to the management of each such mobile home park, specifying the maximum rent for each mobile home space. The rent schedule, if filed before July 1 of that year shall become effective as of July 1 of that year or, if not filed until after July 1, shall become effective as of filing.